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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/082,313	05/02/98	LARSON JR.	H 818.6

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EXAMINER
CROSLAND, D

ART. UNIT	PAPER NUMBER
2736	4

DATE MAILED: 03/09/99

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
09/082,313

Applicant(s)
HOYT M. LAYSON JR.

Examiner
Donnie L. Crosland

Group Art Unit
2736



- ☐ Responsive to communication(s) filed on _____.
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

- ☒ Claim(s) 1-22 is/are pending in the application.
- Of the above, claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 1-22 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claims _____ are subject to restriction or election requirement.

Application Papers

- ☒ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
- ☐ received.
- ☐ received in Application No. (Series Code/Serial Number) _____.
- ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____.

- ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- ☒ Notice of References Cited, PTO-892
- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 2
- ☐ Interview Summary, PTO-413
- ☒ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Notice of Informal Patent Application, PTO-152

— SEE OFFICE ACTION ON THE FOLLOWING PAGES —

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DETAILED ACTION

Claim Rejections - 35 USC § 112

1. Claims 1-22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 is incomplete for omitting essential structural cooperative relationships of elements, such omission amounting to a gap between the necessary structural connections. See MPEP § 2172.01. The omitted structural cooperative relationships are each of the recited “means” in claim 1.

Where are the means connected to or located for a proper structural cooperative relationship.

What is the relationship of the offender’s body worn device with respect to the other recited elements. What is the function of the body worn device?

In claim 1, line 11, “the law enforcement” has no antecedent basis.

Claim 2 is indefinite and misdescriptive in reciting “connectionless oriented” since a connection is clearly made for proper communication between the “means”.

In claim 3, “the communications” has no antecedent basis; the language “circuit switched connection” appears to be functional language unsupported by structure. Also the language appears incomplete sentence structure.

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In claim 4, where is the “tamper signal” sent ; there is no structure recited for producing or generating a wireless signal from the body worn device.

In claim 5, there is no structure recited for providing “redundant communication”.

In claims 6 and 7, the language is incomplete in that the recited “memory card stored in the offender’s portable tracking apparatus” and the functional language that follows would appear to require specific processing circuitry and computer related structure for determining such violations.

In claim 8, lines 6-8, what structure provides for “receiving spatial coordinates”, “sending messages through”, “receiving responses from”, clarification of this language is required. Specific structure or positive recitation for “wireless digital notification devices” must be set forth. The language “connectionless” and “circuit switched connection” are indefinite as discussed in claims 2 and 3.

In claims 10, 11, 18, 19, 21, and 22 the language “connection oriented circuit switched signals or connectionless oriented analog or digital wireless messages” is indefinite as discussed above.

Claim 12 is indefinite in stating being a method claim, and ending up being an apparatus claim. The language “the improvement comprising” should be replaced by language such as “including the steps of.....”; line 5, “the offender” is indefinite since a communication path is established to the offender’s portable tracking apparatus.

In claim 13, where is “a means” connected to.

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Claims 14 and 15 are incomplete in failing to provide structure.

In claim 20, "upload's" should be change to -uploads-.

Drawings

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "means to communicate simultaneously", "means for confirming delivery" as recited in claim 1; "tamper signal"; "memory card"; "connectionless oriented analog or digital wireless"; "a wireline communication network notification device"; "a processor"; generate instructional commands and generate warning information messages; uploading data to the memory card must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Double Patenting

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321© may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

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4. Claims 1-22 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-20 of U.S. Patent No. 5,731,757. Although the conflicting claims are not identical, they are not patentably distinct from each other because it would have been obvious to one of ordinary skill in the art to provide multiple redundant communication paths (conventional relay and cellular base stations) to a central control station and provide simultaneous communication to a victim's portable tracking apparatus (note the victim's apparatus as recited in claim 16 of the patent) since the skill artisan would want to notify the victim as well as other supervisory authority as quick as possible.

The skill artisan recognizes that the analog and digital wireless messages are conventional in cellular systems.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.

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2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

7. Claims 1-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hoshen, cited by applicant.

Hoshen shows an offender and victim collision avoidance and advance warning system, col. 2, lines 50-57, with both the offender and the victim having portable tracking devices as shown in figure 2, and includes GPS capabilities, col. 3, lines 56 et seq. and col. 4, lines 64 et seq.

The reference fails to clearly set forth "simultaneous communication" as recited.

Hoshen states in col. 4, lines 5-15, that the portable tracking device 22 may broadcast a radio signal to be received by cell sites 1, 2, and 3, and this data is delivered through telephone switching office 14 to the data base system 16.

Obviously, the law enforcement authority 26 as well as the victim 28 and any designated cell will received the signal as discussed in col. 4.

Such communication is achieved while communicating with the central data base.

Confirmation means is realized in alarm circuit 224 in figure 2.

The recited analog or digital wireless signal are conventional in cell systems ant the use of such would not involve patentable invention.

The circuit switch connection reads on switching office 14.

The recited tamper signal is realized as 220 in figure 2.

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Redundant communication is discussed in col. 4, lines 5-15.

The recited memory card is obvious and functionally equivalent to the memory 218 in figure 2.


Uploading data is conventional as evidenced in data transfer networks, col. 8, lines 32-42.

Such is normally referred to as programming. Such data uploading is not patentably significant.

Conclusion

8. The prior art to Hoffman et al is made of record and not relied upon is considered pertinent to applicant's disclosure.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to DONNIE L. CROSLAND whose telephone number is (703) 305-4388.


DONNIE L. CROSLAND
PRIMARY EXAMINER

DLC

March 5, 1999